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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re X.V. et al., Persons Coming Under
the Juvenile Court Law.

CONTRA COSTA COUNTY
CHILDREN & FAMILY SERVICES
BUREAU,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

A154932

(Contra Costa County
Super. Ct. Nos. J1600661, J1600662,
J1600663)

C.S. (mother) appeals from juvenile court orders (one as to each child) terminating her parental rights over her three children, X., J., and F., following a contested hearing pursuant to Welfare and Institutions Code section 366.26.¹ Her sole contention is that the juvenile court should have applied the statutory beneficial parental relationship exception to termination. (*Id.*, subd. (c)(1)(B)(i).) We disagree and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are taken, in part, from an earlier opinion in which we addressed mother's challenge to orders directing her to stay away from the three children's school

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

campuses, and limiting her right to make educational decisions for the three children. (*In re A.V.* (Dec. 20, 2017, A151446) [nonpub. opn.].) Because this appeal concerns only mother's challenge to the termination of her parental rights to the three children, our factual recitation focuses almost exclusively on their relationship with mother and we refer to the children's two older siblings and father only to the extent necessary to give context to the family situation.

I. Background

In June 2016, the Contra Costa County Children and Family Services Bureau (agency) detained mother's five children: 15-year-old twin daughters A. and N., 7-year-old daughter J., 11-year-old son X., and 5-year-old son F.

The family came to the attention of the agency after A. made a report that her father had raped her. In the course of investigating the case, the agency social worker learned that father had been emotionally and physically abusing mother for several years. Mother believed father would kill the entire family if she tried to leave him. The twins asserted that for several years father had been sexually abusing them, and both children told their mother of the abuse after every occasion. However, mother claimed she had asked the twins if father had touched them, and each time the twins denied father had touched them in a sexual manner. The twins reported mother could not protect them because father was assaulting and terrorizing her. When interviewed, the younger children gave various accounts of the family situation. X. reported he never witnessed any domestic violence between his parents and felt safe in his home. J. reported father hit and punched the twins, and she felt scared when father punched and choked mother. F. reported when father got mad he said mean things to mother and called her bad words, and he was scared when father punched mother.

A. Jurisdiction Hearing

At the jurisdiction hearing held in September 2016, the juvenile court sustained the agency's section 300 petition regarding all five children. In pertinent part, X. and F. were found to be persons described in subdivisions (b)(failure to protect) and (j)(sibling

abuse), and J. was found to be a person described in subdivisions (b)(failure to protect), (d)(sexual abuse), and (j)(sibling abuse). The court granted mother supervised visits.

B. Disposition Hearing

At the disposition hearing held in October 2016, the juvenile court declared the children dependents of the court and granted the agency custody of the children for placement in foster care. Mother was granted reunification services that included visits of one hour once a week to be supervised by agency staff. The court commented on the horrendous “dynamics of the domestic violence and physical abuse in this household, the blurring of lines, the need for survival and how that has affected mother’s ability to parent and understand appropriate parenting.” The court hoped that, “with extensive therapeutic support,” mother would come to “understand her own history, the role she played in allowing father to sexually and physically abuse the children, and her responsibility for the situation even though she was also a victim of father’s horrendous behavior.”

C. Six-Month Status Review

Before the six-month status review, the agency filed a report with the court regarding the family’s circumstances. In February 2017, X., J., and F. were placed in the same foster care home. Mother had completed a parenting class, and was attending individual therapy, a non-offenders’ sexual abuse group, and a domestic violence program, and participating in supervised visits with the children. However, at the April 2017 status review, agency counsel informed the court that the agency was investigating mother’s unauthorized contact with the twins outside of supervised visits and telephone contacts. Over mother’s objection, the court granted the agency’s request to temporarily suspend mother’s visits and contacts with all the children pending the next hearing scheduled for later that month.

At the continued six-month review hearing, the juvenile court granted mother reunification services for another six months. The court, however, issued stay-away orders prohibiting mother’s presence at the children’s schools. The court also issued orders limiting mother’s educational rights for X., J., and F., based on mother’s “poor

choices and risky judgment” relative to unauthorized attempts to contact the twins that put the younger children at risk. The court recognized that, given the years of abuse mother had suffered, it was not reasonable to expect that six months of services would “fix” her problems and it was “clearly going to take a long time” to remedy the situation. Nonetheless, the court found mother’s “progress thus far is not very good.”

D. Twelve-Month Status Review

Before the 12-month status review, the agency filed an August 2017 report, describing the family’s circumstances. At the time of the report, the children had been detained for more than one year. Mother had continued to participate in services and the agency school worker reported on positive reports from mother’s service providers. Mother and X., J., and F., had weekly one hour supervised visits. The children enjoyed the visits, and mother appropriately asked the children about school and their activities. Mother also brought food and gifts to the visits. When the number of gifts became overwhelming and screening and storage became difficult, the agency social worker limited gifts to birthdays, holidays, and special events, but allowed mother to continue to bring food and snacks to every visit.

The agency social worker reported on the children’s attempts to address the trauma of the family situation. The children were participating in individual therapy, with X. and J. seeing the same therapist. Twelve-year-old X. had been initially diagnosed as showing signs and symptoms indicative of “posttraumatic stress disorder (i.e. avoidance, detachment).” As a result of bi-weekly therapy sessions since October 2016, X. was “able to process being witness to the physical violence his father perpetrated against his mother and two older sisters along with his efforts to protect his younger siblings.” The child was also able to identify his feelings of “fear and sadness,” and demonstrated an understanding of “the concept of safety and what constitutes as healthy family dynamics.” Eight-year-old J. was initially confused about why she could not live with her mother, became tearful when discussing the family, and wanted to reunite with mother. As a result of bi-weekly therapy sessions since March 2017, J. was able to “process feelings of confusion, fear, and sadness in a safe and effective manner,” and she

had made progress in discussing her family, and was able to articulate that with her father being gone the child felt safe because no one would be getting hurt or keeping secrets. Six-year-old F. was also seeing a therapist on a weekly basis. The child was able to articulate that his father got mad, threw things, and would hit or push the child's older sisters.

The agency social worker recommended that the court continue mother's reunification services for another six months until the 18-month status review. Mother had finalized her divorce and continued to make progress towards reunifying with the children through participation in services. Mother's therapist reported that mother had made progress in understanding the possible effects that sexual abuse and domestic violence had on the children. During a meeting with the social worker, mother explained the trauma of the physical and sexual abuse and domestic violence, and the benefits of her attendance at individual and group therapy sessions. However, mother continued to deny contemporaneous knowledge of the father's sexual abuse of the twins. She continued to report that the first time she was aware of father's conduct was when the police arrived at her home and the children were removed from her care. The agency recommended that the court continue supervised visits with X., J., and F., to expand to overnight visits for up to two weeks when mother had housing for the children, to reinstate mother's educational rights, and to direct mother to participate in family therapy. The agency social worker opined the recommendations would allow mother to begin to demonstrate her ability to provide a safe and stable living environment for the children and to show her ability to appropriately advocate for the children's educational needs.

However, in an October 2017 memorandum filed in the court, the agency social worker stated that the agency had changed its recommendation to termination of mother's reunification services and asked the court to set a section 366.26 hearing to determine the children's permanent placements. The agency social worker reported that mother had continued to have unauthorized contacts with the twins. Additionally, mother had been arrested, jailed for four days, and charged with embezzling over \$2,000 from her

employer, and mother had signed a confession stating she had taken the money to pay bills and for groceries. Because of her incarceration, mother missed a visit with X., J., and F. The social worker met with mother after her release from jail. At that meeting, mother said she had not taken anything and her work place had a video. In assessing and evaluating the case, the agency social worker stated that mother's recent conduct demonstrated that, despite nearly 18 months of services, she continued to show a pattern of secretive behavior similar to the behavior that had allowed sexual abuse, physical abuse, and domestic violence to occur in the home for ten years. Additionally, mother had failed to consider how her current conduct and her past conduct had contributed to the family circumstances, and she had not been able to show substantial progress in addressing the concerns that led to the dependency.

At the 12-month status hearing in November 2017, the agency asked the court to make the necessary findings to terminate mother's reunification services, based on its August report and October memorandum. Mother refused to submit on the agency's evidence, and objected to the court making the recommended findings, but she presented no other evidence. Mother's counsel stated mother loved her children, and mother believed she had benefited from therapy. The court terminated mother's reunification services, but ordered the agency to continue to arrange once monthly supervised visits between mother and X., J., and F. The court continued the limitation of mother's educational rights because the court believed it was not in the children's best interests to allow mother to go to their schools because it would upset them. The court scheduled a section 366.26 hearing for February 2018 to determine the children's permanent placements. Although informed of her statutory rights, mother did not file a writ petition challenging the setting of the section 366.26 hearing.

II. Section 366.26 Proceeding

A. February 2018 and March 2018 Hearings

Before the February 2018 hearing, the agency submitted a February 2018 report, recommending that the court continue the matter for several months to allow the agency staff to further assess, in pertinent part, adoption as the permanent placement for X.

While J. and F. had agreed to adoption if that were the permanent plan chosen for them, X. had told his therapist that he wanted to think about adoption. X. understood that because he was 12 years old he had to agree to the adoption. X. loved his current foster parents and wanted to stay with them if he was unable to return to his mother, and he also made clear that he wanted to stay with J. and F. Because the children had a very strong sibling bond - they were “almost inseparable” - the agency social worker opined that it would not be in the children’s best interests to pursue adoption for J. and F. and not X. In asking for additional time, the agency social worker noted that while mother evidently loved her children, she had not been able to address the concerns that led to the dependency with 18 months of family reunification services which had been terminated in November 2017. The agency social worker opined that severing mother’s parental rights would not interfere with an existing parental relationship. Although the children were “close” with mother, the children did not have “a parental bond” that would outweigh the benefits of permanence through adoption. Nor did the three children have a sibling bond with their older twin sisters that would outweigh the benefits of permanence through adoption. The agency social worker reported on the children’s interactions with their current foster parents, noting that all three children had stated they wanted to stay with their current foster parents if they could not reunify with mother. At the February hearing, the court continued the matter for one month.

Thereafter, the agency social worker filed a March 2018 addendum report, recommending that the court continue the matter for another 120 days due to the fact that X. was still not committed to adoption and it would be detrimental to the sibling bond and family cohesiveness to pursue adoption for J. and F. and not X. In the interim, X.’s therapist and the agency social worker were going to continue to explore adoption with X. The agency social worker had also arranged for the therapist treating X. and J. to file a report with the court regarding two issues: (1) the effect of a “goodbye” visit with mother; and (2) X.’s role in his relationship with his mother, and how the child had intervened and protected mother when he witnessed domestic violence between his birth parents.

In a March 2018 letter, filed with the court, the children's therapist addressed the agency's request for information concerning X. and J. As to the issue of a goodbye visit, the therapist reported that X. and J. said their visits with mother were "very important to them," and they wanted a goodbye visit if the court decided to terminate mother's parental rights. While J. wanted the goodbye visit to be held before the court terminated mother's parental rights so that "bad news" at court would not affect the visit, X. wanted the visit after the court terminated mother's parental rights so he would know it was the last visit. The therapist reported that the children wanted their goodbye visit to include the twins and their maternal grandmother, homemade food prepared by mother and the twins and their favorite snacks, a Christmas celebration with an exchange of gifts and a birthday celebration for X., their favorite toys from mother's home, and an exchange of drawings and cards between the children and mother. Both children would be sad if they were unable to have further visits, and X. said he would be " 'mad and depressed if there were no more visits' " and it had been difficult for him because he missed his mother's love and hugs. X. believed it would be " 'a bad thing' " if he and his siblings could never see their mother again because it would be difficult to remember her and they would be left wondering what happened to her and how she was feeling. X. did not want to be adopted if he would not be allowed to ever see his mother again because it would be difficult for him to live with a new mother if he had no contact with his birth mother. The children's foster mother reported to the therapist that a "tearful" X. had told his foster parents that he had been acting out at home because he missed his mother and was worried about not seeing her again.

The therapist also reported on the relationship between X. and his mother. X. stated both he and his mother tried to protect each other from his father's violence, with X. often physically inserting himself between his parents to stop his father from beating his mother. X. also said his mother would similarly intervene between father and the twins when father was beating the twins. X. protected his mother because he believed his father was going to kill his mother and he did not want his father to make his mother " 'sad or hurt her anymore.' " X. was often able to temporarily halt the violence between

his parents and he would then stay with his mother in her bedroom until his father went away. X. frequently took his younger siblings to another room to keep them safe and so that they would not hear their father screaming profanities.

The therapist concluded her letter with specific responses to the agency's questions: (1) statements of X. and J. suggested it would be emotionally detrimental to them if they were not able to have a goodbye visit with mother; and (2) X's relationship with mother, as reported by the child, indicated that X. saw himself as the protector of his mother and his younger siblings, and mother as the protector of X. and his older twin siblings. "While this dynamic appears to have been forged by the father's ongoing domestic violence against his wife and children, [X.] experiences it as continuing to the present."

At the March hearing, the court continued the matter for 90 days with counsel's agreement and on the basis of the March letter filed by the children's therapist. The court authorized one supervised visit between mother and the children, at which time they could exchange drawings and cards. The court, however, ordered that mother was not to bring any food or gifts for the children.

B. June 14, 2018 Hearing

On June 14, 2018, the court held a contested section 366.26 hearing. Before the hearing, the agency filed a May 2018 addendum report, recommending that the court terminate mother's parental rights, as well as father's parental rights, and find that adoption was the most appropriate permanent placement for the children. The agency social worker informed the court that the children's last supervised visit with their mother in May went "very well," with no issues arising during or after the visit, and with the children exhibiting no negative behaviors in the foster home after the visit. The visit included an exchange of letters and drawings, and mother took pictures of the children on her cell phone. The children also asked mother if she had any gifts, and mother explained that gifts were not allowed at the visit. J. was confused as to the lack of gifts and all of the children were disappointed that gifts had not been allowed at the visit. Mother and the children were appropriately affectionate with each other, hugging, kissing, and

saying, “I love you,” with mother calling the children by affectionate names, braiding J.’s hair at the child’s request, tending to J.’s dry skin on her face and lips, and discussing school with the children.

The agency social worker also reported on the children’s situation. All three children were still engaged in once weekly therapy and had been processing their final visit with mother and adoption. After the March court hearing, X. told his foster father that he (the child) was “ready to be adopted.” X. made the same statement to his therapist when he had therapy later that week and the therapist confirmed that X. had stated he was “ready to be adopted.” During a foster home visit in April, the agency social worker spoke with X., who confirmed his feelings about adoption. The agency social worker further informed the court that X. was having a very hard time transitioning between therapy and the foster home; he tended to break down crying after therapy sessions and it took him some time to calm down. The agency social worker had arranged for X. to receive additional services to address the child’s mental health issues and was scheduling assessments for more services. The agency social worker also reported that the children’s current foster parents wanted to adopt the children who had been in their home for over a year, and the three children stated they wanted to stay with their current foster parents and be adopted by them. The agency social worker opined that the children had received stability and reassurance from their current placement and the foster family was committed to permanence for the children, having demonstrated their dedication to the care, well-being and safety, of the children.

The court began the hearing by indicating it had read the agency reports and addendums prepared for the hearings scheduled for February, March, and June. Minor’s counsel asked the court to allow X., who was present in the courtroom, to make a statement. X., who had just turned 13, stated he had gotten good grades for the last quarter in his school and his best grade was an A in language arts - English. X. also indicated he had taken up sewing as a hobby and he had made an article of clothing. At the conclusion of his statement X. left the courtroom.

When the court resumed the hearing, mother's counsel called as a witness the agency social worker who was assigned to the adoptions unit and had been assigned to the case since December 2017, and had supervised the children's last visit with their mother in May 2018. Before the visit, the children had been informed by their therapist that the visit would be a "goodbye" visit. The agency social worker then described the visit as it was reported in the May addendum report. The children were not upset or crying when they left, and the foster parent reported the children were fine after the visit.

The agency social worker also testified that she had discussed with X. the difference between legal guardianship and adoption. X. was told that adoption was when parents lost their legal rights to be a parent. The agency social worker did not specifically say that adoption would mean that X. would not have contact with his mother. But she did tell X. that "we do not expect you to have contact with your mother after adoption." The agency social worker also explained to X. that if the adoption happened he would have no contact with his older siblings by giving him "the same explanation as regarding his mother, that we do not expect . . . contact with your older siblings." The agency social worker did not think she told X. that if the adoption happened he would have no contact with his grandmother.

The agency social worker confirmed she had received the March 2018 letter from the children's therapist, who had reported at that time that X. objected to adoption if it meant he would have no contact with his mother and X. wanted to give cards and drawings to his mother. After receiving the therapist's letter, the agency social worker had approximately four conversations with the therapist. The conversations included discussions about X.'s decision to be adopted. Since the hearing in March, X. had not stated he did not want to be adopted.

The agency social worker testified that, before the March hearing, she had told X. that they could talk about options other than adoption, and the child said he wanted to think about his decision. The agency social worker never discussed any alternative options with X. because after the March hearing and while he was on his way home, X. told his foster parent that he wanted to be adopted. X. also said in a later session with his

therapist that he wanted to be adopted. The agency social worker confirmed with X. “directly” that he wanted to be adopted during a home visit in May 2018 and X. was aware that meant he would not be able to see his mother until after he was 18.

The agency social worker had reviewed the case file and she believed X. had a connection to his mother, but that the connection did not outweigh the permanence the child would secure through adoption. The children had not been in mother’s care since June 2016 and they had been in their current foster home since February 2017, with foster parents who were committed and willing to provide permanence through adoption. The agency social worker opined that mother and X. seemed to care for each other but the role X. had was not of a child but as a parent due to his “parentified behaviors” towards his mother and his younger siblings. When X. was originally detained he appeared to be “parentified,” in that he would try and protect his mother and his siblings. In his present situation and placement X. was continuing to take a parental role, and his foster parents were working with X.’s therapist and his wraparound services team to help redirect X.

C. Juvenile Court’s Section 366.26 Findings and Orders

Following counsel’s arguments, the juvenile court found by clear and convincing evidence that it was likely the children would be adopted and that it was in the children’s best interests to be adopted. The court also found by clear and convincing evidence that it was in the children’s best interests to terminate parental rights and it would be completely detrimental to return the children to their parents’ custody. Before explaining its ruling, the court stated that while the children had been detained for two years since June 2016, the delay had been significant because the court had a “much better picture” of the situation. The court noted it was nice to see X. in court, remarking: “What a poised confident young man. Never looked at his mother once. Never put his eyes on her. And I watched him from the second he walked in until the second he walked out. He focused on [his counsel]. He focused on the Court and he looked several times at the foster parent that was present. There was never even a glance at this mother.”

The court explained its findings, stating in pertinent part: “I think this is a very sad case. It’s always sad when you terminate parental rights. . . . I think that this boy has

finally come to realize that this is where he wants to be for the rest of his life. He has found a safe, permanent, loving home where he can be the child and not the parent. And that's pretty apparent from the notes of what I have read in the reports. [¶] . . . I think it's nice that they had a nice visit. But . . . I certainly do not find it outweighs the benefit of this child having a permanent, loving, stable, safe home. And that's what he's found. Interaction between the natural parent and child always confers some incidental benefit, but certainly not enough – I do not find the attachment significant enough to outweigh the need for . . . the permanency that all three children have found. [¶] The two youngest have been pretty sure for a long period of time, according to the reports. I think it's very sad, the parentification of [X.] He has been parent and it's kind of hard to give up that role. He's been the parent for . . . [his] siblings and [his] mother, to protect. And it's a hard role to give up and I think I saw today he had given up that role and that was nice to see.”

The court filed orders (one as to each child) consistent with its findings made at the June 14, 2018, hearing. Mother's timely appeals ensued.

DISCUSSION

Mother seeks reversal on the sole ground that the juvenile court should have applied the beneficial parental relationship exception to termination of her parental rights. She argues the children's permanent plans should be legal guardianships because she regularly visited the children and the severance of her relationship with the children would be detrimental to them. We conclude the juvenile court did not abuse its discretion in determining that it was in the children's best interests to terminate mother's parental rights, thereby giving the children the opportunity to be adopted.

The law is well settled that when the juvenile court “has not returned an adoptable child to the parent's custody and has terminated reunification services,” as in this case, “adoption becomes the presumptive permanent plan and parental rights should ordinarily be terminated at the section 366.26 hearing.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*)). However, section 336.26 provides for a number of exceptions to termination of parental rights. (§ 366.26, subd. (c)(1)(B).)

At issue here is the beneficial parental relationship exception to be applied when “the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To demonstrate the necessary beneficial parental relationship, a parent has to show that the relationship promotes the child’s well-being “to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575). “If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*) However, “[t]he juvenile court may reject the parent’s claim simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Ibid.*) This is not such an extraordinary case as we now explain.

We see no merit to mother’s arguments concerning the standard by which we review the juvenile court’s decision. She contends that at the June 14, 2018 hearing she met her minimal burden of proving that the beneficial parental exception should apply in this case. However, the standard by which the juvenile court considers evidence (by preponderance) is “for the edification and guidance” of that court. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750.) On appeal, the juvenile court’s standard for considering evidence “ ‘disappears’ ” and we apply “ ‘the usual rule of conflicting evidence . . . , giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’ ” (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881.) Although other appellate courts have applied the substantial evidence test, or a combination of the substantial evidence test and abuse of discretion standard, we have concluded “the abuse of discretion standard is in order. The juvenile

court is determining which kind of custody is appropriate for the child. Such a decision is typically reviewable for abuse of discretion.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) We recognize that “[t]he practical differences between the [sufficiency of evidence and abuse of discretion] review are not significant. ‘[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. Broad deference must be shown to the trial judge. The reviewing court should interfere only ‘if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that [the judge] did.’ [Citations.] However, the abuse of discretion standard is not only traditional for custody determinations, but it also seems a better fit in cases like this one, especially since the statute . . . requires the juvenile court to find a ‘compelling reason for determining that termination would be detrimental to the child.’ (§ 366.26, subd. (c)(1).) That is a quintessentially discretionary determination.” (*Jasmine D.*, *supra*, at p. 1351.) Thus, contrary to mother’s contention, as an appellate court we do not review whether the juvenile court could have believed it was more probable than not that there was a beneficial parental relationship. Instead, we review for an abuse of discretion the court’s contrary finding that there was no beneficial parental relationship. (See *In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

Here, we conclude that the juvenile court, having properly considered the evidence and placing special weight on the children’s need for permanency, reasonably determined that the benefits of a permanent adoptive home for these three children outweighed the benefit of a continued relationship with mother, who despite her consistent visits had failed to take adequate steps toward overcoming the problems that lead to the dependency. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1352.) During the two years in which the children had been detained, the agency staff envisioned that mother would have adequately addressed the concerns leading to the dependency and progressed to unsupervised visits with the children, thereby allowing her to reunite with them. However, mother did not follow through, and by the time of the June 2018 hearing, she had progressed no further than supervised visits and had not adequately addressed the

concerns leading to the dependency. Despite mother's argument to the contrary, the juvenile court was entitled to credit the agency's reports and agency social worker's opinions in support of its ruling that the children's bond with their mother was not so significant as to outweigh the benefits of a permanent adoptive placement.

We are not persuaded by mother's argument that termination of her rights would be detrimental to the children because the children's therapist stated it would be emotionally detrimental if the children did not have a goodbye visit, and J. and X. had expressly stated they would be sad, and X. further stated he would be mad and depressed if he could no longer see his mother. The juvenile court was well aware of the horrendous circumstances that led to the dependency and the trauma that the children continued to experience as they attempted to understand the terrible family dynamics. The therapist's March 2018 letter did not require the juvenile court to find that the beneficial parental exception should apply in this case. Rather, the juvenile court could reasonably find that despite any risk to each child's emotional well-being if they lost contact with mother, it was in each child's best interest to terminate parental rights, thereby freeing them for adoption. “ ‘[A] child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.’ [Citation.] Thus, a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forego adoption in order to preserve parental rights in the absence of a real parental relationship.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

We are similarly not persuaded by mother's argument that termination of her rights would be detrimental because the children wanted to continue their visits with her and would be sad, mad, and depressed if visits would not continue. Section 366.26, subdivision (h) states, in pertinent part: “(1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.” This court has interpreted subdivision (h)(1) of section 366.26 “to require the juvenile

court to receive direct evidence of the children’s wishes regarding termination and adoption at the permanency planning hearing. This evidence may take the form of direct formal testimony in court; informal direct communication with the court in chambers, on or off the record; reports prepared for the hearing; letters; telephone calls to the court; or electronic recordings.” (*In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480.) Here, there is evidence in the record that to the extent the children were of an age to understand the situation they were specifically questioned and expressed their preferences regarding termination of parental rights and adoption, and where they would like to live if they could not live with mother. X. and J. specifically expressed their wishes to continue to visit with mother and stay in contact with her. However, the children’s preferences, as a matter of law, did not require the juvenile court to accede to those wishes. (See *In re Kristen B.* (2008) 163 Cal.App.4th 1535, 1541 [“the Legislature has expressly provided that the best interests of the minor, not his or her wishes, determine the outcome of the case”].) As recognized by one court, “[t]he purpose of the statutory injunction that the court ‘consider the wishes of the child’ simply requires the court to consider what the child’s preferences are. . . . [W]e should not carelessly impose upon them decisions which are heavy burdens even for those given the ultimate responsibility to decide. To ask children with whom they prefer to live or to ascertain what they wish through other evidence is one thing. To ask those children to choose whether they ever see their natural parent again or to give voice to approving that termination is a significantly different prospect.” (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1592–1593.)

In sum, we conclude the juvenile court acted well within its discretion in determining that the section 366.26, subdivision (c)(1)(B)(i), beneficial parental exception to termination of parental rights did not apply in this case. The court’s choice of adoption as the children’s permanent plans afforded them “the best possible opportunity to get on with the task of growing up by placing them in the most permanent and secure alternative that can be afforded them.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

DISPOSITION

The juvenile court orders, dated June 14, 2018, are affirmed.

Petrou, J.

WE CONCUR:

Fujisaki, PJ.

Wiseman, J.*

Contra Costa County Children & Family Services Bureau v. C.S./A154932

* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.